

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TRYSTAN C.,

Claimant,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH Case No. 2006090320

DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Santa Rosa, California on October 24, 2006.

Mark C., claimant's father, represented claimant.

Kristin N. Casey, Attorney at Law, represented North Bay Regional Center (NBRC), the service agency.

The matter was submitted for decision on October 24, 2006.

ISSUE

Is the service agency required to reject the lowest bid for the installation of a ceiling tracking system in claimant's home because claimant disdains the contractor?

FACTUAL FINDINGS

1. In a Notice of Proposed Action dated August 17, 2006, NBRC notified claimant that it would pay \$14,839.00 for the installation of a ceiling-mounted track system in claimant's home. The Notice stated: "\$14,839.00 was the lowest of the bids solicited from three contractors. Funding for more than that amount would not be a cost-effective use of public funds." Claimant filed a fair hearing request on September 14,

2006. Claimant requested that the service agency “give the family the choice of utilizing the middle bid and allowing Bob Dvorak to modify our home with the inside tracking system.”¹

2. Claimant is a six-year-old boy who has been diagnosed with cerebral palsy, seizure disorder and cortical vision impairment. Claimant is not ambulatory and requires full care for all activities of daily living. He lives at home with his parents and two younger brothers.

3. As claimant’s March 14, 2006, individual program plan (IPP) indicates, claimant’s increasing weight makes it difficult for his caregivers to lift him safely. This problem is compounded by the fact that claimant’s parents suffer from a variety of physical problems that diminish their ability to lift. Claimant’s parents requested installation of an “all point tracking system” in their home to provide claimant with access to various rooms in their home. The occupational therapy evaluation, dated April 20, 2005, agreed that a ceiling-mounted tracking system should be installed in claimant’s home to enable him to move throughout his house so that his caregivers would not have to carry him.

4. Suzette Soviero, NBRC case management supervisor, explained that the recommendations for home modifications delineated in the occupational therapist’s evaluation describe the scope of work required. When NBRC solicits bids from contractors, it is standard practice for NBRC to provide each contractor with a copy of the occupational therapist’s report. The contractor then submits a bid based upon the occupational therapist’s specifications.

5. NBRC solicited bids from three contractors for the work outlined in claimant’s occupational therapy evaluation. In the addendum to claimant’s IPP, dated August 17, 2006, NBRC agreed to pay \$14,839.00 for installation of the ceiling-mounted track system. The \$14,839.00 bid, submitted by Mobility Masters, was the lowest bid received by NBRC.

6. The occupational therapist’s recommendations regarding the scope of work, however, were not entirely clear. Consequently, prior to and during the hearing, confusion remained regarding what the actual work would entail. The confusion revolved around whether the ceiling tracking system would be installed in four or five locations in the house, and whether the tracking in the hallway would include connections to the other tracking points located in the living room, claimant’s bedroom, claimant’s bathroom, and his parents’ bedroom. Prior to the hearing, claimant’s father was not aware that NBRC agreed that the tracking system should be installed in five

¹ Claimant also requested that the ceiling-mounted track system include a connection to his parents’ bedroom. This issue, however, was resolved on the day of the hearing. NBRC agreed that this additional modification should be included in the tracking system.

locations in the house, and that the hallway tracking should include connections to the other tracking points in the house.

During the hearing, it became apparent that the contractor who prepared the bid on behalf of Mobility Masters, Alan Parenti, did not think that the occupational therapy evaluation specified that the track in the hallway provide access to the four other tracking points in claimant's house. Mobility Masters' bid of \$14,839.00, therefore, did not reflect this requirement. At the hearing, Parenti submitted a revised bid on behalf of Mobility Masters, in the amount of \$17,339.00, which included the additional work.

7. After the scope of work was clarified, NBRC and claimant agreed that the revised specifications for the five point ceiling-mounted system, with hallway tracking connections to the other tracking points in his house, would meet claimant's need for mobility throughout his house. The parties, however, disagreed as to which contractor's bid should be funded by NBRC.

8. The agency received three bids for the ceiling-mounted track system: The highest bid was from Jonathan and Sons, in the amount of \$25,350.00; the second highest bid was from Access Bridges, in the amount of \$20,614.43; the lowest bid, as revised, was from Mobility Masters in the amount of \$17,339.00.²

9. NBRC contends that it is obligated to accept the bid from Mobility Masters because it is the least costly bid from a contractor who is competent to perform the work. Soviero is familiar with the three contractors who submitted bids for the work to be performed at claimant's house. All three contractors, who are NBRC vendors, are competent. Soviero's experience with Mobility Masters spans more than two years, and she describes this as a "very good experience." She characterizes Mobility Masters as "good, local and reasonable" as well as "quick to respond to emergency needs." Soviero has not received any complaints regarding Mobility Masters' work. Soviero added that claimant's family does not have to actually hire Mobility Masters to do the work in their house. Instead, they can take the amount of money funded by the agency based upon the Mobility Masters' bid, and hire another contractor who is vendored by NBRC to do the work. If the contractor's bid chosen by claimant's family exceeds the amount of money provided by the agency, claimant's family would be responsible for that difference.

10. Claimant's father strongly objects to doing any business with Mobility Masters: he does not trust them, and does not want them coming into his house to

² It was not clear to Soviero whether or not the bids received from Jonathan and Sons and Access Bridges included a hallway tracking system to all other tracking points in the house. Claimant's father opined that, based upon his conversations with these two contractors, that the other bids did include this work.

perform any work. He was upset with the initial bid provided by Mobility Masters because it failed to include a hallway tracking system to all other tracking points in his house.³ He was also upset because Rosemary MacDowell, who works in the Mobility Masters office, refused to provide him with a copy of the bid, and told him that he needed to get a copy of it from NBRC, since it was the funding agency.⁴ Based upon these interactions, claimant's father believes that Mobility Masters will not meet the needs of his family. He contends that claimant should be able to choose which bid NBRC accepts for the work to be done in his house. He requests that NBRC provide funding for either of the other bids submitted.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et. seq.)⁵ Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) The Act further provides that:

The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made upon the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

(§ 4512, subd. (b).)

2. While regional centers have a duty to provide services that effectively implement the goals and objectives of the IPP and reflect the preferences and choices

³ At the hearing, Parenti explained that he prepares his bids based upon the occupational therapist's recommendations. He explained that the additional work reflected in his second bid was not included in his original bid because this work was not delineated in the occupational therapist's report.

⁴ MacDowell explained that it is the practice of Mobility Masters to send the bid to NBRC. If the bid is approved, it is then sent to the family.

⁵ All citations are to the Welfare and Institutions Code unless otherwise indicated.

of the consumer, the provision of services must also “reflect the cost-effective use of public resources.” (§ 4646, subd. (a); see also § 4640.7, subd. (b) [regional center design shall reflect the maximum cost-effectiveness possible].)

When selecting a provider of services and supports, the regional center and the consumer, or his parents, shall consider the following: a provider’s ability to deliver quality services to accomplish the objectives of the IPP, a provider’s success in achieving the objectives in the IPP, the existence of licensing, the cost of providing services of comparable quality by different providers, and the consumer’s choice of providers. (§ 4648, subd. (a)(6)(C).)

3. In the instant case, both parties agree that the installation of a five point ceiling-mounted system would adequately address claimant’s need for mobility throughout his house. The only dispute concerns NBRC’s acceptance of the bid submitted by Mobility Masters, which was the lowest bid submitted. While the Act affirms the importance of honoring the consumer’s choices and preferences, these choices and preferences must be balanced against competing factors such as cost. The fact that claimant’s father does not wish to do business with Mobility Masters does not provide a basis for NBRC to reject its bid, especially in view of Mobility Masters’ solid performance record with NBRC. Accordingly, when faced with the choice between competing bids provided by competent contractors, NBRC correctly chose the vendor who submitted the least expensive bid. If NBRC had chosen a higher bid, based upon the personal preference of claimant’s father, it would have abrogated its duty to provide services and supports in the most cost-effective manner. While claimant’s father dislikes Mobility Masters, his disdain is an insufficient reason to force NBRC to accept a bid from a different, more expensive contractor. Claimant’s father may, however, use the funds provided by NBRC to hire another vendor to perform the work at his house.

ORDER

Claimant’s appeal, filed on September 14, 2006, is denied.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.